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Supreme Court, U. S.
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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 549

L. J. LAWRENCE, GUARDIAN OF HARRY NEWSOME, INCOMPETENT,

Petitioner,

vs.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

BRIEF FOR RESPONDENTS.

W. D. BOONE,
Counsel for Respondents.

SUPREME COURT OF THE UNITED STATES

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Petitioner,

vs.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, B. N. SYKES, J. M. ELEY AND T. W. SEARS, CONSTITUTING AND COMPOSING THE BOARD OF COMMISSIONERS OF HERTFORD COUNTY; JOHN A. NORTHCOTT, COUNTY ACCOUNTANT OF SAID HERTFORD COUNTY.

BRIEF FOR RESPONDENTS.

The two-fold question presented is whether solvent credits acquired by a guardian of an incompetent World War Veteran with moneys received from the United States are subject to taxation when such solvent credits are (1st) notes secured by deeds of trust and mortgages on real estate, and (2nd) general deposits on checking account in a bank.

Prior to and during the years 1931 to 1935, both inclusive, the guardian petitioner received from the United States payments for compensation and insurance for the benefit of his incompetent ward, some of which payments were deposited in bank on checking account, and some of which were lent on interest bearing notes secured by deeds of trust or mortgages on real estate. Neither such bank deposits nor the notes and deeds of trust were listed for taxation during either of the years 1931 to 1935, both inclusive, until subsequent to July and prior to October, 1935, when the same were entered for taxation and assessed by

the Board of County Commissioners of Hertford County. The respondent paid the taxes so assessed, under protest, and sued to recover. The Supreme Court of North Carolina affirmed the judgment of the Superior Court denying the guardian's right to recover the taxes paid, and the petitioner brings certiorari.

Until Section 22, World War Veterans' Act (454 Title 38, U. S. C., 43 Stat. 618) was amended by the Act of August 12, 1935 (Public No. 262, 74th Congress), it appears that the exemption from taxation ceased upon the payment to the veteran or his guardian, as the Court denied certiorari in the case of *State ex rel. Smith* v. *Board of Commissioners of Shawnee County* (132 Kan. 233, 294 Pac. 915), 283 U. S. 855, 51 S. Ct. 648. And until such amendment, we understand that the decision of this Court in *Trotter* v. *Tennessee*, 290 U. S. 354, 54 S. Ct. 138, held that "veterans who choose to trade in lands or in merchandise, in bonds or in shares of stock, must pay their tribute to the State", but that decision leaves open the question whether the moneys on deposit in a bank should be exempt from taxation. Consequently, the pertinent query is the significance of the amendment of August 12, 1935 (Public No. 262, 74th Congress, 49 Stat. 607), and its bearing on the decision of this Court in *Trotter* v. *Tennessee*, *supra*.

The Report of the Senate Finance Committee (Report No. 1072, Calendar No. 1121, 74th Congress, First Session) is quite expressive of the purpose of Congress to "place the law in conformity with the decisions of the Supreme Court (of the United States) on the subject". And the Report from the House Committee on World War Veterans Legislation (House of Representatives Report No. 16, 74th Congress, First Session) states that "there is a need for amendatory legislation to replace Section 22, World War Veterans' Act (U. S. C. Sec. 454, Title 38) and Section 4747, Revised Statutes, in order that the same protection, immunity and exemption may be provided for all benefits".

The amendment of August 12, 1935 (49 Stat. 607), explicitly provides that "the exemption herein contained as to taxation shall not extend to any property purchased in part or wholly out of such payments". The funds from such payments were used for two purposes by the petitioner—as loans on real estate securities and as general deposits in bank—both being solvent credits. Can it be questioned that had he bought corporate bonds with the funds which he used as loans on real estate securities, such bonds would be subject to taxation under the language of the amendment? The deposit in a bank of funds from such payments created a solvent credit held by the depositor against the bank. The identity of the fund was lost among the general assets of the bank.

The similarity in character of the two classes of solvent credits involved in the case at bar makes it difficult to draw any distinction as to their liability to taxation, and the brief of the petitioner tacitly concedes that the notes should be taxed. We submit that the question of the exemption of the bank deposits from taxation has not been decided, so far as we can ascertain, but we are unable to reconcile such exemption as claimed by the petitioner with the apparent purpose of the amendment of August 12, 1935, as declared in the Committee Reports cited *supra*.

"Exemptions from taxation are not to be enlarged by implications if doubts are nicely balanced." *Trotter* v. *Tennessee*, *supra*.

It is respectfully submitted that the notes secured by real estate deeds of trust or mortgages and the deposits in bank as a solvent credit are subject to taxation and that the Supreme Court of North Carolina has properly so held.

W. D. Boone,
Attorney for Respondents.